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By Hand Delivery

Dockets Management Branch
Food and Drug Administration
Room 1061 (HFA-305)
5630 Fishers Lane
Rockville, Maryland 20852

CITIZEN PETITION

To Whom It May Concern:

On behalf of a client, McKenna & Cuneo, L.L.P. ("M&C") hereby submits this citizen petition pursuant to section 701 of the Federal Food, Drug, and Cosmetic Act ("the Act"), 21 U.S.C. § 371, and its implementing regulations, 21 C.F.R. §§ 10.25 and 10.30 (1998). M&C hereby requests that the Commissioner of the Food and Drug Administration ("FDA") designate Merck's Fosamax® (alendronate sodium) 10 mg oral tablets as an alternate reference listed drug in FDA's *Approved Drug Products With Therapeutic Equivalence Evaluations* (the "Orange Book"). FDA policy specifically permits the designation of alternate reference listed drugs, and that policy should be applied in this case for the reasons set forth below.

I. ACTION REQUESTED

On September 29, 1995, FDA granted approval for the new drug application ("NDA") (NDA 20560 001 & 002) for Fosamax® (alendronate sodium) 40 mg and 10 mg tablets, manufactured by Merck. In 1997, Merck received FDA approval of 5 mg alendronate sodium tablets. See Orange Book 19th ed. (1999), at 3-13 (attached as Tab 1). FDA presently lists the 40 mg tablet as the only reference listed drug for alendronate sodium. Despite this designation, recent commercial data confirms that Merck's 10 mg tablet is the market leader among alendronate sodium products. See IMS America Data for 1998 (attached as Tab 2). Because at this juncture our client has no desire to market the 40 mg oral tablet, M&C respectfully requests that the Commissioner designate Merck's 10 mg tablet as an alternate reference listed drug, which will permit the submission of an abbreviated new drug application ("ANDA") for a generic version that will be bioequivalent and therapeutically equivalent to the actual market leader for alendronate sodium tablets.

99P - 2146

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II. STATEMENT OF GROUNDS

1. FDA Policy Permits The Designation Of An Alternate Reference Listed Drug

A "reference listed drug" is defined as the drug product identified by FDA to be the drug product upon which an applicant relies in seeking approval of an ANDA. See 21 C.F.R. §§ 314.3, 314.94(a)(3); Orange Book, Intro. at § 1.4. The ANDA applicant must establish that its drug product has the same active ingredient, dosage form, strength, and route of administration as, and is bioequivalent to, the reference listed drug. See 21 U.S.C. § 355(j); 21 C.F.R. § 314.94.

FDA generally designates a single reference listed drug as the standard to which all generic versions must establish bioequivalence. FDA, therefore, specifically permits firms to petition the agency for the designation of an alternate reference listed drug, in part to facilitate the submission of generic applications to the agency. See 57 Fed. Reg. 17950, 17958 (Apr. 28, 1992); Orange Book, Intro. at § 1.4. Because the action requested herein falls squarely within this FDA policy, FDA should grant this petition and designate Merck's Fosamax® 10 mg tablet as a reference listed drug.

2. An Alternate Reference Listed Drug Is Appropriate In This Case Where The Current Reference Listed Drug Is Not The Market Leader

Section 505(j) of the Act provides that any drug product approved for safety and effectiveness can potentially serve as the reference listed drug for an ANDA. See 21 U.S.C. § 355(j); FDA Letter to Novartis Pharmaceuticals Corporation, dated November 2, 1998, at 7 (Docket No. 96P-0459). In the preamble to the ANDA Final Rule, FDA explained that "the reference listed drug generally will be the market leader as determined by FDA on the basis of commercial data." Nevertheless, FDA permits an applicant to request the designation of another drug as a reference listed drug, recognizing that the initial reference listed drug may be "replaced as the market leader." 57 Fed. Reg. at 17958; see also FDA Letter to Novartis, at 8.

In the case at hand, recent commercial data establishes that Merck's Fosamax® 10 mg tablet is the most commonly prescribed alendronate sodium tablet on the market. The data further establishes that the 40 mg tablet product is a peripheral item in the marketplace. M&C's client accordingly wishes to pursue approval of the more viable, commercial alendronate sodium tablet product, the 10 mg product. In so doing, M&C's client has decided for business reasons not to pursue approval of the 40 mg alendronate sodium tablet product at this time. Given the above, and the fact that designating the alendronate sodium market leader as an alternate reference listed drug will perhaps make available a generic version of the alendronate sodium 10 mg block buster product in a more efficient manner, FDA should grant this petition.

III. CONCLUSION

Given the foregoing, M&C respectfully requests that FDA designate Merck's Fosamax® 10 mg tablet as an alternate reference listed drug for alendronate sodium tablets.

IV. ENVIRONMENTAL IMPACT

The requested action is subject to the categorical exclusion of 21 C.F.R. § 25.24 and does not require the preparation of an environmental assessment.

V. ECONOMIC IMPACT

M&C will submit information on the economic impact of the requested action if requested by the Commissioner.

VI. CERTIFICATION

The undersigned petitioner certifies that, to the best of her knowledge and belief, this citizen petition includes all information and views on which the citizen petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

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APPROVED DRUG PRODUCTS
with
THERAPEUTIC EQUIVALENCE EVALUATIONS

The products in this list have been approved under section 505 of the Federal Food, Drug, and Cosmetic Act. This volume and accompanying first supplement are current through January 31, 1999.

19TH EDITION

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
FOOD AND DRUG ADMINISTRATION
CENTER FOR DRUG EVALUATION AND RESEARCH
OFFICE OF INFORMATION TECHNOLOGY
DIVISION OF DATA MANAGEMENT AND SERVICES

1999

ALCOHOL; DEXTROSE

INJECTABLE; INJECTION
ALCOHOL 5% IN DEXTROSE 5% IN WATER

AP	BAXTER HLTHCARE	5ML/100ML;5GM/100ML	N83256 001	

ALENDRONATE SODIUM

TABLET; ORAL
FOSAMAX

	MERCK	EQ 5MG BASE	N20560 003	APR 25, 1997
		EQ 10MG BASE	N20560 001	SEP 29, 1995
+		EQ 40MG BASE	N20560 002	SEP 29, 1995

ALFENTANIL HYDROCHLORIDE

INJECTABLE; INJECTION
ALFENTA

+	AKORN	EQ 0.5MG BASE/ML	N19353 001	DEC 29, 1986

ALGLUCERASE

INJECTABLE; INJECTION
CEREDASE

	GENZYME	10 UNITS/ML	N20057 004	MAY 08, 1992
+		80 UNITS/ML	N20057 003	APR 05, 1991

ALLOPURINOL

TABLET; ORAL
ALLOPURINOL

AB	DANBURY PHARMA	100MG	N18832 002	SEP 28, 1984
AB		300MG	N18877 001	SEP 28, 1984
AB	GENEVA PHARMS	100MG	N70268 001	DEC 31, 1985
AB		300MG	N70269 001	DEC 31, 1985

ALLOPURINOL

TABLET; ORAL
ALLOPURINOL

AB	MUTUAL PHARM	100MG	N71449 001	JAN 09, 1987
AB		300MG	N71450 001	JAN 09, 1987
AB	MYLAN	100MG	N18659 001	OCT 24, 1986
AB		300MG	N18659 002	OCT 24, 1986
AB	PAR PHARM	100MG	N70150 001	DEC 10, 1985
AB		300MG	N70147 001	DEC 10, 1985
AB	SUPERPHARM	300MG	N70951 001	NOV 30, 1988

LOPURIN

AB	BASF	100MG	N71586 001	APR 02, 1987
AB		300MG	N71587 001	APR 02, 1987

ZYLOPRIM

AB	GLAXO WELLCOME	100MG	N16084 001	
AB	+	300MG	N16084 002	

ALLOPURINOL SODIUM

INJECTABLE; INJECTION
ZYLOPRIM

+	CATALYTICA PHARMS	EQ 500MG BASE/VIAL	N20298 001	MAY 17, 1996

ALPRAZOLAM

CONCENTRATE; ORAL
ALPRAZOLAM

	ROXANE	1MG/ML	N74312 001	OCT 31, 1993

SOLUTION; ORAL
ALPRAZOLAM

	ROXANE	0.5MG/5ML	N74314 001	OCT 31, 1993

IMS America Data for Alendronate Sodium Tablets for Calendar Year 1998

	Q3 98 $	Q3 98 ExUn	Q4 98 $	Q4 98 ExUn	1998 $	97-98 % Ch.	1998 ExUn	97-98 % Ch.
ALENDRONATE	$93,345	59,293	$105,416	64,812	$368,328	36	232,765	30.7
ABA TABS UNCOAT REGULAR ORD	$93,345	59,293	$105,416	64,812	$368,328	36	232,765	30.7
FOSAMAX MSD 95/10	$93,345	59,293	$105,416	64,812	$368,328	36	232,765	30.7
TABS 10MG 30UOU	$44,195	28,032	$47,993	29,410	$174,085	30.3	109,779	25.1
TABS 10MG 100UOU	$36,795	23,726	$42,260	26,371	$147,057	25	94,396	19.7
TABS 10MG 1000 BULK PK	$1,095	702	$1,351	844	$4,143	191.9	2,656	177
TABS 10MG 100UD	$596	382	$653	418	$2,405	4.1	1,548	-0.9
TABS 5MG 30UOU	$6,704	4,306	$8,159	5,059	$25,161	209	16,020	195.7
TABS 5MG 100UOU	$2,923	1,882	$3,900	2,437	$11,496	192.9	7,356	183.2
TABS 40MG 30UOU	$1,037	265	$1,100	273	$3,982	8.2	1,011	3.8

* All units and dollars are in thousands